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MEMORANDUM FOR: Special Assistant/DCI  
Counsel/DCI  
IG

FROM:

[Redacted]

STAT

Legislation Division  
Office of Congressional Affairs

SUBJECT: Statutory Inspector General for the FBI

Attached for your information is a copy of relevant portions of the Congressional Record for July 18, 1989, wherein Senator Specter introduced S. 1340 which provides for a statutory inspector general for the FBI. In his remarks, Senator Specter states, "By creating independent inspectors general, we can ensure the trust and credibility we expect of our intelligence or law enforcement agencies like the FBI and the CIA..."

[Redacted]

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Attachment

OCA/LEG/ [Redacted] (20 July 89)

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## CONGRESSIONAL RECORD — SENATE

July 18, 1989

I know of a man who is 24 years old and lives at home with his mother in Patten, ME. He was hit by a car at the age of 2 and was left brain damaged and physically disabled. He uses an electric wheelchair and does not have use of his arms or legs. He could only communicate by blinking before entering a habilitation program. Since taking part in a program run by the Green Valley Association, he has learned to communicate by pointing at objects or pictures on a board which he keeps in his lap. He can point toward the kitchen to say he wants food or toward the bathroom to communicate the need to use the toilet.

Another Mainer, a woman from Crystal, is now in a day habilitation program because of the effects of brain tumors. Twelve years ago, she was married, working as a bookkeeper and living in her own home. Unfortunately, however, the brain tumors left her unable to work or to live on her own and, when her husband died, she had to give up her home. She now lives in a boarding home and is learning daily living skills such as how to dress, bathe, and cook through the day habilitation program.

There are other people who are taken even further toward living independently through day habilitation programs. These people learn personal habits and how to control their behavior in order to be able to work. They also learn how to maintain a checking account, shop for groceries, and how to manage other activities that are part of being independent and self-sufficient.

Day habilitation programs in my State and many others give the developmentally disabled the means to live as fully and as freely as in possible for them. Without such day habilitation programs, the people I have just discussed may not have had the opportunity to learn to express or to help themselves. In some families with developmentally disabled children or dependents, breadwinners would have to quit jobs if there were no day habilitation services. For many developmentally disabled persons, the lack of habilitation services would leave them no choice but to reside in a large institution.

This legislation is needed to protect the developmentally disabled from being denied services which help them to live as independently and self-sufficiently as possible. The Health Care Financing Administration (HCFA) has approved many State Medicaid plans for the provision of day habilitation services to the developmentally disabled. However, HCFA is now claiming that its approval was a mistake in the cases of Arkansas, Massachusetts, and my home State of Maine—and is likely to make similar claims affecting programs in a number of other States as well. Indeed, I know that my colleague from Arkansas, Senator Pryor, has been concerned by this matter and intends to pursue related legislation. I

look forward to working with home and with other members of the Finance Committee in this regard. The bill that I am introducing today would protect programs already approved by HCFA until regulations are published that specify just what day habilitation services can and cannot receive Federal funding under the Medicaid Program.

I believe that this legislation is essential to ensure that the developmentally disabled do not have to pay for what may or may not be a mistake on the part of HCFA. Programs of day habilitation services allow the developmentally disabled to learn daily living skills. It is a humane and cost-effective way to provide the greatest degree of freedom to the developmentally disabled. By passing this legislation, we, in Congress, will be telling the mentally retarded and their families that we care about them. It will tell them that we will not force them to bear the pain of an arbitrary decision by a Federal agency. It will tell them that we will be providing the services that they depend on unless and until HCFA can justify why the Federal Government cannot pay for these services.

This legislation would go one step further. It would allow States which already operate day habilitation programs to convert their programs to make use of Medicaid home- and community-based waiver authority. In this way, those mentally retarded who already benefit from these valuable programs can continue to do so.

I believe it would be unfair to allow HCFA to deny funding for these programs without first having to publish regulations. I also believe that it would be shortsighted to deny services to those mentally retarded who have benefited from these programs. The mentally retarded and their families, however, are not the only ones who would benefit from this legislation. If maintaining these services will keep the mentally retarded from having to be institutionalized unnecessarily or will reduce the pressure to build more institutions, we all benefit.

There are, of course, more important benefits to continuing programs which help the developmentally disabled individuals to realize their fullest potential and self-sufficiency. These efforts give developmentally disabled individuals opportunity and hope. That is why we really cannot afford to retreat from these important efforts despite the fact that a Federal agency has made an abrupt and ill-considered about-face in interpreting the statutes governing the Medicaid Program. To the contrary, it behooves the Congress to go on record in support of the kind of work that day habilitation programs can accomplish by supporting this legislation and by pursuing further improvements in the Medicaid Program.

Mr. President, I urge my colleagues to support this legislation which would enable very worthwhile day ha-

bilitation programs to continue to help the developmentally disabled to live more fully and freely.

By Mr. SPECTER:

S. 1340. A bill to amend the Inspector General Act of 1978 (5 U.S.C. App.) to provide for an Inspector General of the Federal Bureau of Investigation; to the Committee on the Judiciary.

FEDERAL BUREAU OF INVESTIGATION INSPECTOR  
GENERAL ACT OF 1978

Mr. SPECTER. Mr. President, today I am reintroducing a bill which I first introduced on February 19, 1988, as S. 2076. This bill would amend the Inspector General Act of 1978 by including the creation of a statutory inspector general for the Federal Bureau of Investigation. This bill is being reintroduced at this time in light of the Intelligence Committee's report on the Committee in Solidarity with the People of El Salvador [CISPES].

In consonance with the 1978 act, this inspector general would be nominated by the President and confirmed by the Senate, similar to 24 other existing inspector generals in government today, and would have the authority and duty to inspect, investigate and audit—independently—every phase of the FBI's activities. The result of these inspections, investigations and audits would be reported to the Director of the FBI, the Attorney General, and to the appropriate committees of the Congress.

I believe this new office will well serve the FBI by promoting consistency in its interpretation and enforcement of existing guidelines for the investigation of Federal criminal acts and foreign espionage activities. Current allegations that the Federal Bureau of Investigation in recent years may have overstepped its bounds by investigating a wide array of lawful domestic political and religious groups raises a fundamental question about the effectiveness of the FBI's current system of internal oversight. After all of the lessons of the past, it is startling that we still do not have in place a statutory inspector general as we do in so many other branches of Government, which in my view is essential to effective oversight.

Embarrassing episodes provide ammunition for critics of the FBI and of the U.S. Government, and realistically viewed undermines the activities of the FBI. We can be sure that the claims being leveled by some against the FBI are being widely circulated in the press in foreign countries and being used to undermine the legitimate activities of the FBI. In Judge Webster, and now in Judge Sessions, we have selected FBI Directors who have a proven understanding of the Constitution and the rule of law, and a demonstrated respect for the principles of individual freedom upon which this country was founded.

But it is not possible for the Director of the FBI or any one individual to

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manage personally the vast oversight necessary for such an organization. Judge Webster was quoted as saying that certain activities invoking criticism of the FBI were not of a sufficient nature to come to his personal attention. That, Mr. President, is why additional oversight within an organization like the FBI is necessary.

I am personally convinced that, with extremely few exceptions, the men and women of the FBI share that respect for law of men like Judge Webster and Judge Sessions, and that the men and women are loyal, hardworking Americans who are dedicated to upholding the laws and Constitution. We owe them a debt of gratitude for their untiring fight against crime and their enormously successful efforts to counter the growing threat of domestic and international terrorism and foreign espionage.

I personally have had the opportunity to work with many members of the Federal Bureau of Investigation as assistant counsel for the Warren Commission in 1964. I also worked with members of the FBI on the preparation of complex cases as an assistant district attorney in Philadelphia and later for 8 years as district attorney. I know of their competence, their dedication, and their capability.

Sometimes, however, a complex organization does not work as designed because the design itself is flawed. We must build more checks and safeguards into our powerful government organizations so that we are not relying on one well-intentioned, but greatly overburdened, official at the top to keep an entire organization on course. We saw the problems of this structure with the CIA in the Iran-Contra affair. By creating independent inspectors general, we can ensure the trust and credibility we expect of our intelligence or law enforcement agencies like the FBI and the CIA and, in turn, our entire government.

It seems clear that there was a lack of overall direction in some of the FBI's investigations of domestic political and religious groups over the past several years. As recently as 1984, one FBI document reflected the views of the Denver and New Orleans FBI field offices that "in spite of attempts by the Bureau to clarify guidelines and goals for this investigation, the field is still not sure of how much seemingly legitimate political activity can be monitored." Why was there such confusion and what did the FBI do internally to address it? Who was watching the watchdogs, as they proceeded with their investigations, unsure of the bounds of the law?

More recently, at the instigation of the Senate, the FBI's Inspection Division undertook an internal investigation of the FBI's Terrorism Section's performance in investigating the Committee in Solidarity with the People of El Salvador [CISPES]. That report makes clear that if there were an effective system of management and ad-

ministrative oversight in place for cases involving First Amendment rights, the Bureau's 1983-85 investigation of CISPES might have been avoided.

In 1982, the FBI's Inspection Division identified and reported deficiencies in the FBI's terrorism section's policy structure and training. While it recommended corrective action, those actions were not effectively implemented because of internal disagreement and the lack of a followup system by the Inspections Division which was designed to serve the Director in a management oversight role. This situation reflects weaknesses in a system where FBI actions could adversely impact the First Amendment rights of Americans. It would be difficult to state with a high degree of confidence that today's FBI Inspection Division would serve the role for which it was intended.

In November 1988, the General Accounting Office [GAO] noted some improvements in the FBI's inspection capabilities since 1979. Nonetheless, the GAO has recommended that the head of the FBI's Inspection Division be independent in order to ensure permanency in the position and to "avoid instances where leaders of the division may not be willing to report situations or make recommendations consistent with what should be done because of their concern about their future careers as a result of presenting bad news to the leadership." I agree with this statement for a number of reasons.

The legislative branch plays an important oversight role with respect to the FBI, but usually after the fact. Two congressional committees from each house of Congress have overlapping oversight responsibility for FBI activity. The two Judiciary Committees oversee FBI activity relating to criminal law enforcement, while the two intelligence committees oversee FBI activities relating to foreign counterintelligence and international terrorism. The dividing line is not always so neat, however, and many cases involve both of these spheres. The Attorney General's guidelines under which the FBI operates differ significantly depending on whether a criminal investigation or a foreign counterintelligence investigation is involved. The latter guideline is classified, and that is a matter which will be the subject of scrutiny and inquiry by the intelligence committees. The FBI's decision to use one guideline or the other determines which congressional committee will exercise oversight of the FBI involvement.

It is a complicated system, with many opportunities for things to go wrong. As we have seen, they do go wrong, even with strong leadership, and the largely post-facto congressional oversight which realistically viewed is structurally insufficient to catch and correct small errors of judgment and policy before they become on

some occasions embarrassing disasters. Simply put, the FBI's authority is so great, its potential for abuse or miscalculation so high, and its organizational structure so complex that independent internal monitoring on a day-by-day basis is essential. This is the case with 108 other governmental agencies, and perhaps among that list the FBI would rank high in its requirement of, and the necessity for, an independent inspector general.

I feel very strongly that we in Congress should protect our intelligence and law enforcement agencies from being scapegoats for every policy failure or unsuccessful venture by our Government. We can only do this, however, if our constituents are confident that these agencies are adequately monitored—the public confidence is vital—and that we in Congress are willing to take steps to correct mistakes when they are made, and make structural changes in the designs of organizations like the FBI or CIA. The current system of oversight is inherently incapable of providing us with the information we need in order to do this.

Statutory inspectors general already are providing an independent internal system of checks and balances for 24 departments and agencies of the Federal Government. The Comptroller General, who inspects these IG's, has concluded that they are serving the executive and legislative branches far better than the IG's under the previous system, who were beholden to the system which they inspected. It is time to add the FBI to the list.

Mr. President, I ask unanimous consent that the text of the bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 1340

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That this Act may be cited as the "Federal Bureau of Investigation Inspector General Act of 1989".*

#### SEC. 2. OFFICE OF INSPECTOR GENERAL OF THE FEDERAL BUREAU OF INVESTIGATION.

(a) SPECIAL PROVISIONS CONCERNING THE FEDERAL BUREAU OF INVESTIGATION.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended by redesignating sections 8E and 8F as sections 8I and 8G, respectively, and inserting after section 8D the following new section:

#### "SPECIAL PROVISIONS CONCERNING THE FEDERAL BUREAU OF INVESTIGATION

"Sec. 8E. (a)(1) Notwithstanding any other provision of this Act, the Inspector General of the Federal Bureau of Investigation shall be under the authority, direction, and control of the Director of the Federal Bureau of Investigation with respect to audits or investigations, or the issuance of subpoenas, which require access to information concerning—

"(A) ongoing criminal investigations or proceedings;

"(B) undercover operations;

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"(C) the identity of confidential sources, including protected witnesses;

"(D) intelligence or counterintelligence matters; or

"(E) other matters the disclosure of which would constitute a serious threat to national security.

"(2) With respect to the information described in paragraph (1), the Director may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after the Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Director determines that such prohibition is necessary to prevent the disclosure of any information described in paragraph (1) or to prevent the significant impairment to the national interest of the United States.

"(3) If the Director exercises any power under paragraph (1) or (2), the Director shall notify the Inspector General of the Federal Bureau of Investigation in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General of the Federal Bureau of Investigation shall transmit a copy of such notice to the Committees on Governmental Affairs and Judiciary of the Senate and the Committees on Government Operations and Judiciary of the House of Representatives, and to other appropriate committees or subcommittees of the Congress.

"(b) In carrying out the duties and responsibilities specified in this Act, the Inspector General of the Federal Bureau of Investigation—

"(1) may initiate, conduct and supervise such audits and investigations in the Federal Bureau of Investigation as the Inspector General considers appropriate;

"(2) shall give particular regard to the activities of the Counsel, Office of Professional Responsibility of the Department of Justice and the audit, internal investigative, and inspection units outside the Office of Inspector General of the Federal Bureau of Investigation with a view toward avoiding duplication and insuring effective coordination and cooperation; and

"(3) shall refer to the Counsel, Office of Professional Responsibility of the Department of Justice for investigation, information or allegations relating to the conduct of an officer or employee of the Federal Bureau of Investigation employed in an attorney, criminal investigative, or law enforcement position that is or may be a violation of law, regulation, or order of the Bureau or any other applicable standard of conduct, except that no such referral shall be made if the officer or employee is employed in the Office of Professional Responsibility of the Department of Justice.

"(c) Any report required to be transmitted by the Director of the Federal Bureau of Investigation to the appropriate committees or subcommittees of the Congress under section 5(d) shall also be transmitted, within the seven-day period specified under such section, to the Committees on the Judiciary and Governmental Affairs of the Senate and the Committees on the Judiciary and Government Operations of the House of Representatives."

(b) CONFORMING AND TECHNICAL AMENDMENTS.—The Inspector General Act of 1978 is amended—

(1) in section 4(b)(2)—

(A) by striking out "section 8E(a)(2)" in each place it appears and inserting in lieu thereof "section 8F(a)(2) in each such place"; and

(B) by striking out "section 8E(a)(1)" and inserting in lieu thereof "section 8F(a)(2)"; and

(2) in section 8G (as redesignated in subsection (a) of this section)—

(A) by striking out "or 8D" and inserting in lieu thereof "8D or 8E"; and

(B) by striking out "section 8E(a)" and inserting in lieu thereof "section 8F(a)".

#### SEC. 3. TRANSFER OF FUNCTIONS.

Section 9(a)(1) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in subparagraph (T) by striking out "and" at the end thereof; and

(2) by inserting at the end thereof the following new subparagraph:

"(V) of the Federal Bureau of Investigation, the division of such bureau referred to as the 'Inspection Division' and, notwithstanding any other provision of law, that portion of each of the divisions or offices of such bureau which is engaged in internal audit activities; and".

#### SEC. 4. FEDERAL BUREAU OF INVESTIGATION DEFINED AS AN ESTABLISHMENT.

Section 11 of the Inspector General Act of 1978 is amended—

(1) in paragraph (1) by inserting "Federal Bureau of Investigation," after "Director of the"; and

(2) in paragraph (2) by inserting "the Federal Bureau of Investigation," after "the Federal Emergency Management Agency."

#### SEC. 5. INSPECTOR GENERAL AS AN EXECUTIVE SCHEDULE LEVEL IV POSITION.

Section 5315 of title 5, United States Code is amended by inserting after the item relating to the Inspector General of the Small Business Administration the following new item:

"Inspector General, Federal Bureau of Investigation."

By Mr. DECONCINI (for himself and Mr. CRANSTON):

S. 1341. A bill to provide for certain administrative authority and requirements relating to the Arizona Veterans Memorial Cemetery; to the Committee on Veterans' Affairs.

#### ARIZONA VETERANS MEMORIAL CEMETERY

● Mr. DECONCINI. Mr. President, as a member of the Senate Committee on Veterans' Affairs, I am introducing, along with my distinguished colleague, the chairman of the Veterans' Affairs Committee, Senator CRANSTON, an important bill to establish certain administrative authority and requirements for the Arizona Veterans Memorial Cemetery. Specifically, this bill would authorize the Department of Veterans Affairs to employ persons in connection with the Administration of this cemetery if they were employed the State of Arizona in that capacity at the State-run Arizona Veterans Memorial Cemetery on the day before the cemetery was transferred to the United States pursuant to section 346 of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 541). In addition, this bill would require the Secretary of Veterans Affairs to prepare an operating budget plan for the administration of the cemetery for fiscal years 1989, 1990, and 1991, and submit such plans to the Committees on Veterans Affairs of the Senate and House of Representatives.

Before I discuss the needs for the current proposal, I would like to express my deep appreciation and gratitude to the distinguished chairman

and the ranking member of the Senate Committee on Veterans' Affairs, Senators CRANSTON and MURKOWSKI, without whose invaluable assistance the dream of a new national cemetery in Arizona could never have been realized. I would also like to give special thanks to my friend and distinguished colleague from Arizona, Senator MCCAIN, for all his hard work in the development of the original authorization for the incorporation of the Arizona Veterans Memorial Cemetery into the Nation Cemetery System. And I would be remiss if I did not mention invaluable contributions of House Committee on Veterans' Affairs Chairman SONNY MONTGOMERY and Representative BOB STUMP, that committee's new ranking member, in these efforts. Finally, I would like to thank all the Members of the Arizona delegation, both past and present, for their cooperation and support through the years on this issue.

Together we have traveled a long road since 1976 when the State of Arizona first appropriated funds for the development of a parcel of land in Maricopa County for use as a veterans' cemetery. Mr. President, the State of Arizona's Veterans Service Commission obtained the land for a cemetery in 1976, and the cemetery was then developed by the State with a Veterans' Administration [VA] grant pursuant to the 50/50 matching funds program in section 1008 of title 38, United States Code. The cemetery opened in May 1979 as the Arizona Veterans Memorial Cemetery and was operated by the State until 1989.

On May 22, 1988, section 346 of Public Law 100-322, which was based on legislation I authored, was enacted to provide for the transfer of the cemetery into the National Cemetery System. The transfer was effective on April 1, 1989, and the cemetery was then renamed "the National Memorial Cemetery of Arizona." It now operates as the 113th cemetery in the National Cemetery System.

Mr. President, when the transfer became effective, certain State of Arizona employees who had provided exceptional service to the facility when it was run by the State were nevertheless found to be ineligible for Federal employment because they were not Federal civil service employees and apparently did not test well on normal civil service standardized measures despite their specialized experience and expertise. This bill would authorize the Department of Veterans Affairs [DVA] to employ certain persons who had worked at the cemetery prior to its transfer into the National Cemetery System. Specifically, under this bill, DVA could employ such persons without regard to civil service requirements if they meet criteria and qualifications established by the Secretary.

In addition, this bill includes a reporting requirement regarding the funding of the operations of the cemetery.